BEFORE THE

WASHINGTON METROPOLITAN AREA

TRANSIT COMMISSION

ORDER NO. 245

In the matter of:	)	SERVED April 12, 1963
	)	
Application of D. C. Transit System, Inc., for authority to increase fares.	)	Application No. 226
	)	Docket No. 32
	)	
	)	

APPEARANCES:

HARVEY M. SPEAR, JOHN R. SIMS, JR., C. ROBERT SARVER, Attorneys for D. C. Transit System, Inc., Applicant.

LEONARD N. BEBCHICK, Attorney for Alfred Trask and Richard Williams, Protestants.

CHARLES BECHHOEFER, Attorney for Friendship Citizens' Association, John R. Waechter and pro se, Protestants.

HERBERT P. LEEMAN and EDWARD C. WILCOX, Attorneys for Federation of Citizens' Association of the District of Columbia, Protestant.

DIANA K. POWELL, pro se, Protestant.

WILLIAM R. PIERCE and LEONARD M. SHINN, Attorneys for General Services Administration, Intervenor.

RUSSELL W. CUNNINGHAM, General Counsel, Washington Metropolitan Area Transit Commission.

Before Frederick J. Clarke, Chairman, Albert L. Sklar, Vice Chairman, and H. Lester Hooker, Commissioner.

OPINION

On December 5, 1962, D. C. Transit System, Inc., filed an application seeking authority to increase certain fares for the transportation of passengers within the District of Columbia and between the District of Columbia and certain points in Maryland, all of which territory lies within the territorial jurisdiction of the Washington Metropolitan Area Transit Commission, hereinafter referred to as Commission. This application presents the Commission its first opportunity to pass upon several important issues involving D. C. Transit System, Inc. Since this is the first fare application of any significance before the Commission involving the present applicant, the Commission considers it appropriate to allow the record to show certain basic background information concerning the creation and make-up of the Commission.

This Commission came into official existence on March 22, 1961, as result of the Washington Metropolitan Area Transit Regulation Compact, hereinafter referred to as Compact, by and between the State of Maryland, Commonwealth of Virginia, and the District of Columbia. The basic purpose for creating the Commission was to centralize in a single commission the regulation of all mass transportation of persons within the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, in place of separate regulation by the States of Maryland and Virginia, the District of Columbia and the Interstate Commerce Commission. The Metropolitan District is defined by Article I of the Compact as follows:

> "There is hereby created the Washington Metropolitan Area Transit District, hereinafter referred to as Metropolitan District, which shall embrace the District of Columbia,

the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince Georges, in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport."

The composition of the Commission is provided for in Article III of the Compact. The Commission is composed of three members; one from each of the participating governments. Under the Compact, each member must also be a member of the regulatory body of the State from which such member is appointed.

The Commission has the usual and ordinary powers exercised by Federal and State regulatory commissions over transit operations. In addition, the Commission is charged with the positive duty and responsibility for improving transit and alleviating traffic congestion within the Metropolitan District on a co-ordinated basis without regard to political boundaries.

The creation of the Commission has obviously simplified considerably the regulatory processes, for the jurisdiction involved, for the carriers, and the public. The Commission is able to prescribe transit fares on an area-wide basis and to assure the public of transportation service at non-discriminatory fares without regard to state boundaries. The carriers are able to avoid the cumbersome task of seeking relief from a multiple of jurisdictions, which necessitated separate proceedings, entailing uncertain and often make-believe allocations of revenues and expenses. The inherent advantages enuring to the benefit of the jurisdictions and the

carriers directly benefit the public. Furthermore, the users of the transit services have only one Commission to deal with in matters involving mass transportation in this area.

By its application, which was accompanied by appropriate tariffs, D. C. Transit System, Inc., hereinafter sometimes referred to as applicant, seeks authority from this Commission to increase its charges for tokens from twenty (20¢) cents to twenty-five (25¢) cents, effective January 7, 1963. Tokens are presently sold in lots of five (5) for One ($1.00) Dollar. The net effect of applicant's proposal is to eliminate the use of tokens and to provide for a straight basic fare of twenty (25¢) cents cash. No changes are proposed in the school fares, express fares, or Maryland intrastate fares, or any other fares, rates or charges.

The proposed fares were suspended until April 13, 1963, pursuant to Section 6(a), Article XII, Title II, of the Compact.

Informal protests to the proposed increase in fares were filed by a number of individual transit riders, all of whom were given an opportunity to testify at the hearing. Several of such individuals appeared and made statements for the record. Formal protests were filed on behalf of Friendship Citizens' Association, Federation of Citizens' Association of the District of Columbia, and certain other individuals, all of whom are shown under the heading "Appearances" in this order. The General Services Administration, hereinafter sometimes referred to as GSA, was permitted to intervene in opposition to the application after the proceedings had commenced.

Pursuant to notice duly given in accordance with the Commission's rules and regulations, public hearings on the application commenced on January 11, 1963, and continued intermittently for fourteen (14) days, through and including March 12, 1963.

Applicant presented the testimony of its Vice President and Comptroller, James H. Flanagan, and Hawley S. Simpson of the Transportation Engineering Firm of Simpson and Curtin. The Commission's staff presented testimony through its Chief Accountant, Melvin E. Lewis, its Chief Engineer, Charles W. Overhouse, and the Director of the District of Columbia Department of Highways and Traffic, Harold L. Aitken. The protestants, represented by Leonard N. Bebchick and Charles Bechhoefer, presented the testimony of Robert Stromberg, Chief of the Accounting Division of the Common Carrier Bureau of the Federal Communications Commission. The General Services Administration presented testimony through Alexander J. Lipske, Jr., Rate Analyst for the Office of Transportation, General Services Administration, and Paul Foreman of the Office of Transportation, GSA.

The combined testimony of these expert witnesses have produced a record containing 1,685 pages of oral testimony and some 130 exhibits.

While the testimony of these witnesses may lack perfection and while certain portions of the testimony may be irrelevant and entitled to little weight in an urban transit fare case, the Commission is satisfied that the testimony before it represents the considered judgment of men who appear to be qualified to speak upon the subject to which their testimony related. The Commission has been further assisted in

the disposition of this case through the filing of briefs, reply briefs, and oral arguments of the parties.

Before entering upon a discussion of the facts of this case, the Commission desires to explain the role of the Commission's staff in rate proceedings. The Commission views the close working relation it has, and must have with its staff, as forbidding, in a quasi-judicial proceeding before it, a partisan or adversary role by its staff. The staff is in the unique position, by virtue of its day by day contact with both the public and the carriers, to weigh and evaluate service requirements and to recommend appropriate means through which service can or should be improved.

Generally, however, the staff's function is to objectively scrutinize and analyze all available data having a bearing on the case. This entails the expert application of established regulatory accounting principles and technical engineering norms to the specific facts involved.

Because of the tight time schedule within which the Commission is required, under the terms of the Compact, to issue an order in this case, it was necessary to take the testimony of some witnesses out of order, but in no case was any party deprived of a full and complete opportunity to present material and relevant testimony. In order that rate hearings may be further expedited, the Commission's rules and regulations require an applicant to submit with its application, heretofore not required in this jurisdiction, numerous financial exhibits, including financial and statistical information of past operations as

well as estimated financial results of the future under both present and proposed fares. With this information available to all interested parties for a considerable time prior to the hearing -- in this case more than thirty days -- the Commission hopes to substantially curtail the regulatory lag in disposing of fare applications.

The primary reason advanced by applicant for seeking the proposed fare relief is increased operating costs resulting from a new three year labor contract which applicant entered into, effective November 1, 1962, with Division 689 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America. Applicant contends that this new contract provides for increases over present wages over the next three years in excess of Four Million ($4,000,000) Dollars. It is also contended that fringe benefits will add more than an additional Six Hundred Thousand ($600,000) Dollars to future operating expenses over the three-year period.

In its application, applicant used the actual operating results for the twelve-month period ended August 31, 1962, as the test period for purposes of projecting future results. The calendar year 1963 was used by applicant for the future test period. Applicant projected results for the future test period under both present and proposed fares. All witnesses testifying in connection with this phase of the application chose to use the identical test periods, both past and future, as used by applicant. Since the twelve-month period ended August 31, 1962, coincides with the most recent twelve-month period, for which the Commission's accounting staff has concluded its audit

in connection with the certification to be made to the District of Columbia Board of Commissioners under the school fare subsidy bill (P.L. 87 - 507, 87th Congress, June 28, 1962), the Commission finds that this period is a reasonable test period. The Commission also finds that the calendar year 1963 is a reasonable future test period.

All calculations as to operating revenues and expenses were made on a system-wide basis, except as noted herein. No allocations were made between territorial jurisdictions or between the types of transportation performed. Section 6(a), Title II of the Compact, specifically provides that the Commission may not establish any fare that may be "unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District." This provision of the Compact clearly contemplates the establishment of fares without regard to jurisdictional boundaries. Applicant's operations within the Metropolitan District, including regular route transportation, charter, sightseeing, and contract operations, are subject to the jurisdiction of the Commission. Likewise, the rates, fares and charges, assessed for such transportation, are subject to the jurisdiction of the Commission. Consequently, all exhibits relating to these matters have included revenues and expenses covering these various types of transportation performed by applicant. In his testimony, the Commission's Chief Accountant pointed out that all of these various revenues contribute to the financial well being of applicant and thus benefit directly the transit rider. He noted that charter and special operations are incidental to mass transit service

and gives the applicant an opportunity to utilize equipment and personnel which would otherwise be idle. He specifically pointed out that applicant is better able to utilize the time of drivers who otherwise would have to be paid for idle time under terms of the union contract.

The Commission's Chief Accountant, an expert cost analyst, adopted the incremental cost approach in dealing with the incidental and supplementary activities of applicant; namely, charter, sightseeing and limousine service. His approach to this facet of applicant's operations was to recognize that, in the case of limousines, it was irrelevant to load a "by-product" activity with full administrative, garaging, and supervision costs, as long as these costs would remain at the same level even if the limousine activity were discontinued. The Commission's Chief Accountant found that the limousine operation was contributing $79,690 for the year toward overhead, and so showed it on his statements.

As to the charter and sightseeing activities, because of the Commission's control of rates for these activities, the revenues and expenses involved were left in with the general operations of applicant.

Applicant has only seven (7) buses in exclusive charter work. Furthermore, applicant's rates now, as opposed to previous years, are higher for charter and limousine service than the rates for similar service on file with the Commission by other similar carriers. Applicant's sightseeing rates also appear to be at about the same level as other carriers. It is difficult to make exact comparisons among sightseeing rates of the various carriers, because the "tours" offered differ from one another.

Relative to all these matters, the Commission is of the opinion and finds that the accounting treatment accorded the revenues and expenses was proper.

The Commission deems it appropriate to answer the legal argument advanced in this proceeding concerning the so-called "Golden Shopper" which is a type of service provided at a fare of ten (10¢) cents for shoppers in the downtown business district of Washington, D. C. It is contended that the inclusion of the revenues and expenses from this operation in the financial statements in this proceeding does violence to the entire proceeding.

This operation was instituted approximately one year ago and the record shows that it is producing gross revenues of about three thousand dollars per month. Because of the small area covered by this operation, the maximum distance for an individual ride is much shorter than the ordinary distance traveled by a transit rider in applicant's primary operations. Moreover, the Commission does not consider it feasible nor lawful under the Compact to analyze the various routes of service and areas of operations to determine if each of such operations is being conducted at a profit. In any event, the Commission is of the opinion that the "Golden Shopper" operation is in the interest of the rate payers as a class and that the small loss incurred in conducting this operation has no effect on the fare structure prescribed by this Order.

All parties of record were substantially in accord insofar as the financial results of applicant's operations for the past test period are concerned. As previously noted, the Commission's staff had substantially completed its audit of the applicant's books for the year ended August 31,

1962, prior to the filing of the application. As a result of this audit and subsequent review of the books and records of applicant, the recommended adjustments had the effect of reducing the operating expenses of applicant for the year ended August 31, 1962, by approximately $315,000. The adjustments have been substantially acquiesced in by the applicant, and the books and the records of the Company have been adjusted accordingly. In fact, these adjustments have generally been reflected in applicant's exhibits which accompanied the application in this matter.

Many of the adjustments were made in order to properly allocate expenses incurred by applicant for activities not related to the performance of mass transportation. As pointed out by the Commission's Chief Accountant, applicant has intercorporate relationships with other corporations. These intercorporate relationships have substantially complicated the auditing process for the Commission's staff. In many instances, the reasonableness of expenses must be based primarily upon judgment, especially where allocations are involved. This Commission is satisfied, however, that for purposes of this case the staff exercised proper judgment in its audit. All the parties of record concurred in, or accepted for projection purposes, the financial results of applicant for the year ended August 31, 1962, as adjusted by the staff of the Commission.

However, the Commission is concerned over whether or not the accounts and records of applicant should be burdened with expenses of unrelated activities, necessitating allocations based on judgment. That this practice has been permitted in the past is of no special significance, particularly since this is the first opportunity this Commission has had to pass upon these issues. Perhaps more important is the fact that under the Compact the Commission is required to establish fares based upon the operating ratio theory, discussed more fully in a subsequent portion of this Order. The operating ratio theory in effect allows a return on operating expenses. When the National Association of Railroad and Utilities Commissioners adopted the operating ratio theory of rate making for the bus industry in 1952, recognition of this very fact was noted. The following is a direct quote from the Final Report:

> "One argument that has been presented against this theory is, that in effect a return is being allowed on expenses. In analyzing this contention, it should be understood that where the term 'expenses' is used, it should be construed as meaning justified and reasonable expenses."

The Compact (Sec. 6(a)(3)) provides that "In the exercise of its power to prescribe <u>just and reasonable</u> fares.," the Commission shall give consideration, <u>inter alia</u>, to "...the need of revenues sufficient to enable such carriers, under <u>honest, economical, and efficient management</u>, to provide such service (emphasis supplied)."

This Commission will not allow operating expenses to be distorted by intercorporate relationships or otherwise to the extent that they become conjectural as opposed to factual. For this reason, the Commission will

separately and in the immediate future direct applicant to review this entire matter and make appropriate recommendations to the Commission in the form of a plan for separation of non-transit activities from the transit operations, including proper allocations of salaries for its officers in the performance of duties related to transit operations, and distinct bookkeeping procedures whereby expenses of the other corporations will not end up on financial statements of the applicant.

The reasonableness of the salaries of the President and other officers of applicant was questioned in this proceeding.

The determination of officers' salaries is largely a matter left to managerial discretion. While the Commission may not dictate to management the amount of salaries to be paid, it may, for rate purposes, disallow portions of such salaries. In this instance, the Commission is of the opinion and finds that salaries as reflected in the financial statements appearing elsewhere in this Order, for rate purposes, are not unreasonable considering the magnitude of the Company's financial structure, fleet of vehicles, and personnel. Salaries of certain officials and officers have been allocated and adjusted by the staff prior to the filing of the application. The Commission is of the opinion and finds that the salaries of these officials and officers, as adjusted, are fair and reasonable. However, this should not be interpreted as binding upon the Commission in considering the plan called for hereinabove.

FUTURE PROJECTIONS

Several key issues need to be resolved before projections for the future rate year are discussed. These issues are listed and will be discussed in the following order:

(1) Acquisition adjustment account;

(2) Reserve for track removal and repaving;

(3) Reserve for rail properties;

(4) Excessive depreciation on buses;

(5) Depreciation on buses acquired by applicant after 1958.

Acquisition Adjustment Account

The Acquisition Adjustment Account was established by Order No. 3592 (November 27, 1957) of the District of Columbia Public Utilities Commission as a means of reducing the annual depreciation charges based on the original cost of the property as opposed to the acquisition cost of such property. The excess of net original cost of property to predecessor owner over purchase price to the present owner was $10,339,041.19 as of August 15, 1956. Under the aforementioned Order, this amount is presently being amortized over a ten (10) year period, as a credit to operating expenses, in annual amounts of $1,033,904.12 commencing August 15, 1956.

The reserve for track removal and repaving, discussed elsewhere in this Order, was also established in Order No. 3592, supra, contemplating the accrual of $10,441,958, to be accrued over a ten-year period in annual amounts of $1,044,196. Thus, although unrelated, the treatment accorded the acquisition adjustment and the reserve for

track removal and repaving -- both being of approximately equal amounts, being spread over an equal time period and one being a debit and the other a credit -- has had the effect of neutralizing each other insofar as the financial position of applicant is concerned. On the other hand, if the reserve for track removal and repaving is suspended, which is being required by this Order, the accounting records of applicant will immediately reflect additional annual net revenues in the amount of approximately $1,000,000 unless the remaining balance in the Acquisition Adjustment Account is spread out over a longer period of time.

The treatment of the Acquisition Adjustment Account should not be interferred with unless appropriate reasons, in the public interest, dictate such action. It thus becomes necessary to analyze the original basis used by the District of Columbia Public Utilities Commission in requiring this Account to be written off over a ten-year period.

An insight into the reasoning of the District of Columbia Public Utilities Commission in treating this Account as it did may be gained by reference to the following quote from Order No. 3592, supra:

> "...The staff has proposed that the allowance for depreciation should be based on the purchase price of the property to D. C. Transit, and that under sound accounting treatment, this is all that the Company is entitled to recover through depreciation charges against the customers. To accomplish this objective, without the laborious task of distributing the purchase price over all items of depreciable property and developing new depreciation rates, the staff has proposed that depreciation be accrued on the original cost of the property at depreciation rates prescribed by Order No. 4001, effective July 1, 1953, with an offsetting credit in the amount of $1,033,904 to amortize the acquisition adjustment of $10,339,041.19 over a ten-year period retroactive to August 15, 1956...."

Thus, it is evident from the above quoted language that the proper solution, completely equitable to both applicant and the ratepayers, would have required the total sum represented by the Acquisition Adjustment Account to be distributed "over all items of depreciable property" as recorded on the books as of August 15, 1956. On the basis that such treatment would have been the only completely accurate and equitable method, then it would appear that the selection of the ten-year period was somewhat arbitrary. On the other hand, it is implicit from language in Order No. 3592, supra, that, although unrelated, the Acquisition Adjustment Account and the reserve for track removal and repaving were not set up in total disregard of the other. The following language appears pertinent:

> "Under the staff proposal of a rate base of $8,130,999 based on purchase price of the property, the acquisition adjustment would be amortized over a ten-year period at the rate of $1,033,904 per annum, as an offset to the depreciation charge, based on original cost, of approximately $2,000,000 per annum. The staff proposal would, however, make separate provision for the cost of track removal and repaving, estimated for purposes of this determination as $10,441,958 by an annual charge against operations of $1,044,196 over a ten-year period. It can be seen from the foregoing that the annual charge against income for depreciation and track removal and repaving, discussed more fully hereafter, will be approximately the same under either method...."

Thus, it is not completely proper to suggest that the ten-year period was established arbitrarily. It is more accurate to say that it was an appropriate time period in light of all the circumstances existing at the time, particularly, in view of the treatment accorded, in the same Order, the track removal program.

Since the accumulation of reserves for track removal and repaving is being suspended, it behooves the Commission to re-examine the amortization

period for the Acquisition Adjustment. To establish a pragmatic basis for arriving at a new amortization period, it is necessary to relate the Acquisition Adjustment balance to the properties acquired on August 15, 1956, which are still in service and subject to depreciation at original cost.

It is obvious that this cannot be accomplished on the present record since the evidence is insufficient to enable the Commission to enter appropriate findings. The Commission will leave the record open for the purpose, and only for the purpose of allowing, at some future date, the presentation of additional evidence on this single issue. On the basis of additional study and evidence on this matter, the Commission will be in a position to reach a result equitable to all concerned. On the present record, however, the Commission is of the opinion and finds that the rate of amortization of the Acquisition Adjustment Account should remain unchanged until adequate evidence supporting a different rate is presented to the Commission.

Reserve for Track Removal and Repaving

By virtue of the provisions of Section 7 of the Franchise Act, the applicant is required to remove its tracks and to repair the streets.

The District of Columbia Public Utilities Commission initially estimated the cost of such undertaking to be $10,441,958. A reserve was established whereby the ratepayer would reimburse applicant for the future cost in annual installments over a ten-year period (program estimated to be ten years) in the amount of $1,044,196. The initial estimate contemplated complete removal of the entire track structure. This reserve was designed to provide in advance for the cost of track

removal and repaving. It was based on estimates only, and was subject, from the beginning, to revision in the light of later developments. The accruals to this reserve to December 31, 1962, totaled $6,656,748.22, whereas net costs and charges against the reserve, also to December 31, 1962, were $1,842,499.10, leaving an excess accrual as of December 31, 1962, in the amount of $4,814,249.12. As of December 31, 1962, then, the accruals were building up faster than the costs of the program. Contrary to the situation involving the Acquisition Adjustment, the $10,441,958 estimate adopted by the District of Columbia Public Utilities Commission in 1957, has no claim to immutability; it has no value whatever once a new estimate is available. The Commission must relate the accrual and the rate of accrual to the actual pace and progress of the track removal program.

The applicant proposed to spread the remaining balance over the remaining life of its franchise, a period of slightly over thirteen and one-half years.

Applicant's witness, on direct examination, addresaed himself to the ultimate liability alone, whereas the Commission's staff witness testified primarily as to the costs of track removal and repaving for the foreseeable future. Since the cost of track removal and repaving must be ultimately borne by the ratepayers, the Commission has a duty to continuously keep this matter under review to insure that the reserves become neither excessive nor insufficient. It is important at this point to examine the balance now in this reserve to determine whether or not

the balance is sufficient to cover the anticipated costs of track work in the foreseeable future.

The protestants contend that further accruals to the reserve for track removal and repaving should be suspended on the grounds that the amount of reserves available are sufficient to cover all costs for the foreseeable future.

Mr. Aitken, Director of the District of Columbia Department of Highways and Traffic, testifying for the staff, presented testimony indicating that the track program planned through June 30, 1965, would cost applicant $4,143,228. He further testified that, beyond the 1965 date, there are no immediate plans to either remove track or repave over the track area, and that unless applicant is required to remove the track for other reasons, such as for the subway construction, the resulting pavement should be structurally adequate to carry traffic for fifteen to twenty years. Mr. Aitken further testified that, in the event the applicant was required to remove track as an incident to subway construction contemplated by the National Capital Transportation Agency, the total cost for the current program would be increased to $4,605,228. The applicant, on rebuttal, through its witness, Mr. Flanagan, undertook to point out that the estimates of Mr. Aitken were unreasonably low and that same should be revised upward from $4,143,228 to $5,682,444.

All estimates gave full effect to possible savings as result of economies made possible by the sharing of paving costs by the District of Columbia Department of Highways and Traffic.

The suggestion of the applicant that the $10,441,958 accrual program be lengthened to August 15, 1976, has no value whatever, because the $10,441,958 is now a meaningless figure.

Calling attention to the estimates of the Director of the D. C. Department of Highways and Traffic, if his estimate of $4,143,228 is unduly conservative, there is still a $670,000 cushion in the reserve for track removal and repaving. As road and street projects are planned some time in advance, and bids and costs are calculated with some accuracy when the projects are finalized, there will be ample time for the Commission to correct any major errors in track removal estimates.

Giving due consideration to all the evidence of record, the Commission isof the opinion and finds that the balance in the reserve for track removal and repaving at December 31, 1962, in the net amount of $4,814,249.12 is sufficient to cover the reasonably anticipated demands upon it for the immediate future. This being the case, the Commission is of the opinion that the accumulation of reserves for track removal and/or repaving, should be suspended as of January 1, 1963. The Commission will keep abreast of the track removal and repaving program of the District of Columbia and if, at any time, because of a change in the program, there appears to be a need for resumption of accruals to this reserve, the Commission will act accordingly.

As the financial burden of the track removal program falls upon the ratepayer, consideration should be given to having Congress relieve the applicant of this indefinite future obligation.

Depreciation

The three remaining issues noted above, reserve for rail properties, excessive depreciation on buses, and depreciation on buses acquired after 1958, justify a complete analysis of the entire subject of depreciation. Depreciation is the exhaustion of the service life of the property in use. The accrued depreciation in the property at a given time is the sum total of the exhausted service life of the various units of the property at that time. This exhaustion of service life is the combined result of the working of three factors, namely: (1) inadequacy, (2) obsolescence, and (3) physical deterioration.

Physical depreciation has two aspects, structural and functional. The former is due to wear and tear incurred with service and the passage of time. Functional depreciation includes obsolescence, inadequacy and shifts in demand. Both have the effect of shortening service life. A new unit of property is constructed or installed with the expectation that it will remain in useful operation a number of years. It may be conceived as a reservoir of future serviceability. As time or operation proceeds, the aggregate serviceability or service life is diminished. It is this gradual diminution that constitutes physical depreciation.

Where units of property are subject to hard usage, wear is the determinant of shortening service life. Where they are exposed to severe weather conditions, deterioration or decay becomes the controlling element. Where technological improvements take place so that more economical units become attainable, obsolescence reduces service life. Where there

is increase in service requirements to meet higher standards of service, inadequacy compels retirement from service. Where there is a shift in demand from one type of service to another, there is system instead of unit obsolescence. All these changes may combine variously in reducing the service life of units or the property as a whole. These constitute depreciation.

Depreciation is often considered only in terms of structural wear and decay. These are the obvious aspects, usually discernible with some precision. Under modern conditions, however, when there are continuous changes in design of property and in demand for service, the functional factors are likely to exceed the structural in effect upon service life. Machinery and equipment, also buildings and other structures, are commonly scrapped not because they have suffered structural deterioration, but because they have become unsuited to efficient operation and are, therefore, replaced by more modern facilities. The functional factors as well as structural usually operate gradually. Obsolescence and inadequacy as well as wear and physical decay advance steadily as improvements take place or as growth or change in demand develops.

Relating the aforementioned discussion to this proceeding, the pertinent relevancy is that potential obsolescence is merely one of the factors to be considered in estimating the service life of depreciable property. That property may become obsolete is just as important a factor as inadequacy or wear and tear in arriving at an estimated service life.

The question is frequently posed whether or not the public is affected one way or the other in the event the service life of a given asset is understated or overstated for depreciation purposes. It is difficult, of course, to always estimate with complete accuaracy the period of useful life of the property. This is particularly true of property such as buildings, with an unusually long service life. For instance, a building may be accorded, for depreciation purposes, a useful life of forty years. At the end of the forty years, the property may still continue to serve a very useful purpose in the performance of public service. However, since the original cost, less estimated salvage value of the property, has been recovered, the ratepayers enjoy the benefit of this property without being further burdened with depreciation charges.

The point is that once the ratepayer has reimbursed the investor for the investment in a particular asset, less estimated salvage value, no further depreciation charges can be assessed against the ratepayer even though the property is retained in service. Thus, in the event the useful life of a given asset is understated for depreciation purposes, the overall cost to the ratepayers as a class is not affected. This is not to say that this Commission is not keenly aware of the fact that in all instances, depreciation charges should be evenly spread over the useful life of the property to the greatest degree possible in order to assure that current depreciation charges are paid by the current ratepayers.

Just as the useful life of property can be understated, it also can be overstated. An example of overstatement of the usefulness of property is the depreciation treatment accorded the rail properties involved in this case, and which prompted this discussion. In this instance, the annual depreciation charges were insufficient to enable the investors to recover their investment during the useful life of the property. Certainly one of the elements here which shortened the life expectancy of the property was a shift in demand from one type of service to another. By public demand, the inflexible rail system gave way to a more flexible bus system. Thus, the depreciation charges were understated from the beginning.

When the ratepayers are considered as a class, whether the useful life of property is understated or overstated, under accepted accounting principles adopted by the regulatory authorities, the ultimate cost to the ratepayer is unaffected. If the service life is understated, future ratepayers are able to enjoy the property without the burden of additional depreciation charges. When the service life of property is overstated, the future ratepayers are burdened with depreciation charges on property which has been taken out of service.

Also pertinent to some of the issues raised in this case is a discussion of the profits and/or losses from the sale of depreciable property no longer useful in the rendition of service.

Whether a profit is made or a loss is incurred is dependent upon the nature of the property, the demand for it in the market place, and other factors. At a given time, because of current demand, fully depreciated buses may be sold for a substantial profit, while at other times, the market might be such that buses could not be disposed of at all, resulting in a loss of even the estimated salvage value. By the same token, a fully depreciated building may be very serviceable for transit operations, but worthless for other purposes. It may be possible to sell other fully depreciated buildings at substantial profits, but care must be exercised to determine whether such profit arose from the value still inherent in the structure or rather from appreciation of the land on which it stands; in some instances, the final selling price would have been greater if the structure were demolished before sale of the land.

It appears reasonable that, as far as depreciable utility property is concerned, there is a proper expectation on the part of the investor that he will, by charges for depreciation, eventually recoup his exact investment in a depreciable asset from the ratepayer, either during or after that asset's period of service.

Remaining for basic discussion in connection with depreciation is land.

It is a cardinal principle of regulatory law that a utility is not entitled to recover, through depreciation charges or other accounting devices, its investment in land. This principle stems from the fact that in some instances the value of land appreciates and in other instances depreciates. Whether or not land appreciates or depreciates

depends upon many factors and particularly whether at the time the land is sold an inflationary period or deflationary period controls the market place.

While the ratepayers may have a claim to depreciable property, at least to the extent of the depreciation reserves, no such claim can be directed to land.

The Supreme Court of the United States, in the case of Board of Public Utility Commissioners, et al., vs. New York Telephone Company, 27 U.S. 23 (1926), had an opportunity to discuss the issue as to the claim ratepayers have to property acquired by a utility and devoted to public use. In that case, the Supreme Court resolved the issue in the following language:

> "Customers pay for service, not for the property used to render it. Their payments are not contributions to depreciation or other operating expenses or to capital of the company. By paying bills for service they do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of the company. Property paid for out of moneys received for service belongs to the company just as does that purchased out of proceeds of its bonds and stock..."

The above language of the Supreme Court, while referring to both depreciable and non-depreciable property, clearly resolves the issue raised in this case concerning the proceeds from non-depreciable property.

If land becomes of no further use and is disposed of at a profit, the investor is entitled to the profit; or, if at a loss, the investor must suffer the loss.

The basic theory carefully interwoven in the many principles involving depreciation may be succinctly stated as follows: a utility, whose earnings are rigidly controlled, in return for devoting property to public use, is entitled to be reimbursed to the extent such property is devaluated.

Reserve for Rail Properties

Included as a deduction against income for the future rate year is the sum of $693,870, which is a special depreciation charge to recover part of the unrecovered cost of abandoned rail facilities. This treatment for abandoned rail facilities was recognized in a Depreciation Reserve Study of applicant made for the District of Columbia Public Utilities Commission by J. L. Ingoldsby, an independent engineering consultant, which study was adopted by Order No. 4754, issued May 24, 1961, by the District of Columbia Public Utilities Commission. This order concluded that applicant's reserve requirements for rail properties would be fully met as of August 15, 1963, under accrual rates authorized by the District of Columbia Public Utilities Commission and presently in effect. The aforementioned sum of $693,870 is being accrued through August 15, 1963, pursuant to the rates so authorized.

Historically, the transit operations being currently conducted by applicant were primarily rail or trolley type operations. With the advancement of the motor vehicle and the development of buses, a balanced rail-bus system was inaugurated. In 1956, in issuing a franchise to applicant, the Congress of the United States, as a condition thereof,

required applicant to embark upon a program of extraordinary retirement of rail property and facilities. The conversion from a rail-bus system to an all-bus system progressed gradually until January, 1962, when the last streetcar gave way to an all-bus system.

It became readily apparent that under existing depreciation rates applicant could not recover its net book cost in its rail properties prior to conversion to an all-bus system. Therefore, on January 1, 1960, applicant was authorized by the District of Columbia Public Utilities Commission to accrue $295,000 per year as additional depreciation on "rail facilities," constituting passenger street cars, rail service equipment, track and line, duct system, low tension cable, and sub-station equipment (D. C. PUC Order No. 4631, dated March 31, 1960).

This additional provision was designed to write off the unrecovered cost of 49.4% of applicant's rail facilities, as projected at August 15, 1963, and was in addition to the regularly scheduled depreciation rates on rail facilities at the rate of 3.45% per year.

The Commission's staff developed figures showing that this program of accruals would result in a balance of unrecovered costs at August 15, 1963, of some $790,000. Such balance would be available as an offset against any over-accruals of depreciation on other classes of property.

The following testimony of the Commission's Chief Accountant, commencing on page 713 of the transcript, sums up the status of this entire matter as of August 15, 1963:

"The indications are that at August 15, 1963, the Company will still be entitled to write off or recover $791,638. However, certain developments have taken place since the inception of the 43 and a half month write-off program.

"In 1961, that is, over a year after the start of this program, the accounting staff of the District of Columbia Public Utilities Commission developed an over-accrual on 366 buses in the amount of $2,329,635, which, when added to an estimated salvage value of $85,003, produced a total of $2,414,638 of over-accrued depreciation on buses. However, what is not commonly understood is that at that time the 2.4 million of over-accrual on buses was kept in abeyance pending completion of a complete depreciation reserve study of the Company.

"Later in 1961, and I refer to District of Columbia PUC Order 4754, dated May 24, 1961, page 3, it developed that the over-all Company reserve requirement at June 30, 1960, according to the study of Mr. Ingoldsby, was $27,287,231, which compared to a book reserve figure of $27,361,451, or, to put it another way, the reserve requirement found by the Ingoldsby study was about $74,000 less than the book figures. When we deal with a theoretical figure like a reserve requirement the $75,000 difference is not considered very important, when considered in the light of a $27 million reserve.

"As a result of this study, the District of Columbia Public Utilities Commission in May '61, on page 8 of its Order No. 4754, Paragraph 4, under a heading, 'Findings and Conclusions', found 'that the special amortization of abandoned rail facilities should be continued to its conclusion'.

"Later, in Paragraph 10, the Commission went on to say in its Findings, 'That the retention of the special amortization of abandoned rail facilities, together with the reduced annual rate of depreciation applicable to buses, bus spare parts and accessories, and limousines, and with the continuance of present rates of depreciation on the balance of the plant, will produce annually the amount of depreciation accrual estimated to be necessary'.

"On the next page, under Paragraph 11, the Commission said, 'That the accumulated reserve for depreciation to date is adequate and no adjustment thereof is indicated or necessary'."

"This means simply that in the opinion of the PUC in 1961, the reserve requirement of D. C. Transit would be adequate and proper and not excessive if depreciation and

the special amortization on rail facilities continued through 8/15/63.

"This Order had the effect, also, of arriving at this conclusion: That the 2.4 million of over-accrual of depreciation on old buses was completely offset and balanced by under-accruals on other items of property as developed by the Ingoldsby study.

"Therefore, it is not proper to speak any further of the 2.4 million dollar over-accrual on buses, assuming depreciation on abandoned rail facilities is permissible. It has been completely eliminated and offset by under-accruals in other parts of the Company's reserve."

Notwithstanding the above testimony, the protestants and intervenor contend that the amount of $693,870 should not be allowed as a deduction against income in this proceeding. They contend that applicant has been previously compensated for assuming the risk that the rail properties would become inadequate or obsolete before the investment in them was entirely recovered.

The United States Court of Appeals for the District of Columbia Circuit, in the case of Washington Gas Light Company vs. Baker, 88 U.S. App. D. C. 115, 188 F. 2d 11 (1950), was confronted with the question of obsolescence. In disposing of the question, the Court stated:

> "It thus becomes relevant to determine whether or not investors have, during the useful life of this property, been compensated for assuming the risk that it would become inadequate or obsolete before the investment in it was entirely recovered. Such compensation may have been made either through the inclusion of obsolescence (1) as one of the elements used in calculating depreciation expense, or (2) as a risk considered in fixing the permissible rate of return."

All previous rate orders involving applicant and predecessor companies, dating back twenty-eight (28) years (since the merger of Washington Railway and Electric Company and Capital Traction Company), were made a part of the record in this proceeding. Applicant's witness presented data, much of it taken from the aforementioned orders, showing that the returns

earned in the past twenty-eight (28) years up to the present time were generally below the rates of return established as being reasonable by the regulatory body. A careful study of the aforementioned orders clearly shows that the regulatory authority, in fixing the rates of return in the aforementioned orders, did not allow any additional compensation for the risk of obsolescence.

Witnesses, testifying on behalf of protestants and intervenor, attempted to show that applicant had been compensated for the risk of obsolescence through excessive rates of return on stockholders' equity and on the investment in the Company by the stockholders of applicant. The rates of return, established in the aforementioned orders, were based on rate base and/or operating ratio. In the opinion of the Commission, relating past earnings to return on equity or on investment would not be a proper yardstick to gauge the level of past earnings since these factors were not determinants in the rate-setting process.

Another contention made is that reimbursement for obsolescence took place through a rate of depreciation which was high enough to cover obsolescence as well as wear and tear. The answer to this contention is determinable in clear and objective fashion, merely by looking to the status of the accumulated depreciation figures. If depreciation rates did include a provision for obsolescence, such rates would have automatically built up depreciation reserves sufficient to cover the abandonment losses. The depreciation reserve study, discussed elsewhere in this Order, fully answers the contention here made, and indicates

clearly that the depreciation rates in use did not, and do not, include a weighting for obsolescence. A review of the aforementioned orders confirms this conclusion.

It should also be pointed out that no one prior to the issuance of the franchise to D. C. Transit System, Inc., contemplated early abandonment of all rail properties. The concept of total conversion to an all-bus system was expressed for the first time in the franchise itself. As noted in other portions of this Order, depreciation rates have been the subject of careful study and treatment by the District of Columbia Public Utilities Commission, particularly since the advent of applicant in 1956.

The contention has been made that the investors of Capital Transit Company and/or D. C. Transit System, Inc., were compensated for the risk of obsolescence as result of the transaction whereby D. C. Transit System, Inc., acquired the properties of Capital Transit Company at a $10,339,041.19 discount. Inasmuch as Capital Transit Company sold the property for $10,339,041.19 less than the book value, the Commission is unable to follow the argument that Capital Transit's investors were compensated for the risk of obsolescence, notwithstanding various bookkeeping entries made prior to and during the sale. However, when D. C. Transit System, Inc., acquired the property at the aforementioned discount, it could have been argued then that its investors would not be entitled to reimbursement. Here, however, the District of Columbia Public Utilities Commission stepped in and gave new life to the question of reimbursement for unre-

covered costs by setting up the Acquisition Adjustment Account, discussed elsewhere in this Order.

Thus, the District of Columbia Public Utilities Commission set up a schedule requiring the stockholders of D. C. Transit System, Inc., to pay back in full, directly for the benefit of the ratepayers, the difference ($10,339,041.19) between the purchase price and the book value of the assets.

Thus, in speaking of the so-called ten million dollar bargain, it is more accurate to say that the bargain flowed and is flowing directly to the ratepayers.

Several witnesses made reference to the possibility of offsetting losses on rail facilities against gains experienced by applicant on sale of various properties. This matter has been fully discussed above, under the heading of "Depreciation." In summation, the Commission recognizes that "gains" may be experienced on disposal of depreciable items, and these are indeed used as offsets to depreciation, under the heading of "salvage." But gains on disposal of non-depreciable property, such as rights-of-way and land, are beyond the control of the Commission and accrue to the stockholders.

A point at issue was whether or not the provision of $693,870, being depreciation on rail facilities from January 1, 1963, to August 15, 1963, should be disallowed as an operating cost because of its non-recurring nature. The Commission's opinion is that this amount is an actual part of applicant's projections of experience for calendar year, 1963, and

should be included as a part of the depreciation expense.

It should also be noted that the staff witness developed figures (Exhibit No. 16) which indicated that, as of November 30, 1962, the estimated unrecovered costs of rail facilities at August 15, 1963, will not be $1,097,197, as projected in the Ingoldsby study, but not more than $791,638. This suggests that there may be an over-accrual projected as of August 15, 1963, of $305,559. The Commission is cognizant of the possibility, as pointed out by the staff witness, that offsetting under-accruals in other accounts may also develop by August 15, 1963, and will consider ordering a new depreciation reserve study at an early date. The Commission has noted already how erroneous results are possible when action is taken on over-accruals in one account before related, and offsetting, accounts are studied.

Applicant's depreciation rates, which did not provide for the risk of obsolescence, have been under the continuing supervision of the District of Columbia Public Utilities Commission pursuant to Section 8, Paragraph 16, P.L. 435. The rates of return of applicant and predecessor companies have been generally lower than authorized by the regulatory body and these rates of return did not take into consideration the risk of obsolescence. Based on this record, to deny applicant the right to recover the sum of $693,870, would be, as a matter of substance, confiscation of applicant's property.

The Commission finds that the investors in applicant and/or predecessor companies have not, during the useful life of these properties, been com-

pensated for assuming the risk that the rail properties and facilities would become inadequate or obsolete before the investment in them was entirely recovered through either (1) rates of return, (2) depreciation charges, (3) the alleged bargain obtained by applicant in purchasing the property in 1956, (4) profits from sale of other property or (5) in any other manner discussed in the record.

Excessive Depreciation on Buses

Excessive depreciation on buses, which ultimately amounted to 2.4 million dollars, has been accorded extensive discussion in this Order under the heading, "Reserve for Rail Properties." The Supreme Court of the United States, in the case of Board of Public Utility Commissioners, et al., vs. New York Telephone Company, supra, treated the matter of excessive depreciation charged to past operations in some detail.

In that case the New Jersey Board of Public Utility Commissioners had issued an order requiring that excessive depreciation in the amount of $4,750,000 charged against past operations be used to make up deficits in future net earnings. In making its ruling, the Board stated:

> "...But having made such charges in the past, future charges beginning January 1st, 1925, may be deducted from the normal charge until such time as at least $4,750,000 of the excess is absorbed as hereinafter provided."

In confirming a three-judge District Court, which had enjoined the Board from implementing its decision, the Supreme Court stated:

> "It may be assumed, as found by the board, that in prior years the company charged excessive amounts to depreciation expense and so created in the reserve account balances greater than required adequately to maintain the property. It remains

> to be considered whether the company may be compelled to apply any part of the property or money represented by such balances to overcome deficits in present or future earnings and to sustain rates which otherwise could not be sustained."

The Supreme Court, in concluding its opinion, held that excessive depreciation charges from past operations cannot be used to make up deficits in present or future earnings in the following language:

> "...The property or money of the company represented by the credit balance in the reserve for depreciation cannot be used to make up the deficiency."

In this proceeding, applicant has acquiesced in allowing the 2.4 million dollars, excess depreciation on buses, to be deducted from the undepreciated value of the abandoned rail facilities. The Commission finds that such treatment, being in the public interest, is just and reasonable.

Depreciation on Buses Acquired After 1958

The applicant has proposed that all buses acquired by it in 1958 and subsequent thereto be depreciated over a period of fourteen (14) years, in lieu of the present seventeen (17) years. The protestants and intervenors objected to this proposal and presented testimony in support of their position.

The Commission's Chief Engineer testified that in his opinion applicant should be permitted to depreciate these buses over a period of fourteen (14) years, and that the estimated net salvage value should be increased from the present two and one-half (2½%) percent to four (4%) percent of the original cost. The basis of his testimony was that a

higher standard of service could be provided under such treatment. He recognized that the depreciation cost for fourteen-year-life buses is greater than a seventeen-year life and expressed the opinion that this added cost might be offset by savings in maintenance costs. Regardless of whether there is a resultant additional cost, it was his opinion that the standard of service should be improved by operating newer buses. In addition to his recommendation for placing the buses on a fourteen-year depreciation rate, he also recommended that the Company be required to buy at least seventy-five (75) new buses each year.

The Commission must decide whether the requirements for higher standards of service, discussed earlier, justify the proposed depreciation treatment. In another rate proceeding before the Commission, in Order No. 59, dated September 7, 1961, the Commission announced the following policy:

> "The Commission views seriously the traffic problem in the Washington Metropolitan District. It would appear that the immediate solution to the traffic congestion problem is the movement of more people by fewer vehicles. The immediate goal of the Commission is to raise the service standards of transit sufficiently to make mass transportation more attractive. More frequency of service by more modern equipment will improve service standards. The Commission's policy is that within a reasonable time all carriers will be required to operate all base schedules on weekdays and all schedules on Saturdays and Sundays with air-conditioned equipment. Improvements in service standards necessarily involve additional costs to the carriers and must be offset by additional revenue obtained from fares paid by the riding public..."

It is from a thorough consideration of both structural and functional factors, particularly as the latter is expressed through higher standards of service and passenger comfort, that the Commission concludes that a fourteen-year life is proper for buses acquired by applicant since 1958. This new rate actually applies to all buses acquired by applicant since it commenced business on August 15, 1956, since no buses were acquired between 1956 and 1958.

Assuming that applicant's fleet remains constant at eleven hundred fifty-five (1155) buses, it will be necessary to acquire eighty-two and one-half (82½) new buses, on the average, each year to maintain a fourteen-year life (1155 buses ÷ 14 years = 82.5 buses/year).

The Commission will, by this Order, require applicant to purchase eighty-two (82) new air-conditioned buses this year, to be placed in service on or before October 1, 1963. Thereafter, applicant shall purchase, on the average each year, a number of new air-conditioned buses equal to one-fourteenth (1/14) of the number of buses in its fleet. Stated another way, the applicant shall purchase within the next fourteen years a number of new air-conditioned buses equal to the total number of buses in its fleet.

School Fare Subsidy

The contention has been made by protestants and intervenor that in determining gross revenues available to applicant, the Commission should take into consideration the school fare subsidy legislation (P.L. 87 - 507, 87th Congress), the pertinent portion of which reads as follows:

"Sec. 2. If, after giving effect to any and all motor vehicle fuel tax and real estate tax exemptions, the net operating income from mass transportation operations in the District of Columbia of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this Act for any twelve-month period ending August 31 is less than the rate of return established by the regulatory commission having jurisdiction in such carrier's last rate case, net after all taxes properly chargeable to transportation operations including but not limited to income taxes, on its gross operating revenues in the District of Columbia, exclusive of any school fare subsidy, then the Washington Metropolitan Area Transit Commission shall as soon as practicable after such August 31, certify to the Commissioners of the District of Columbia or their designated agent with respect to such twelve-month period: (1) an amount which is the difference between the total of all reduced fares paid to each such carrier by schoolchildren in accordance with this Act and the amount which would have been paid to each such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation; and (2) an amount which is the amount by which each such carrier's net operating income from mass transportation operations in the District of Columbia is less than such rate of return established by the appropriate regulatory commission in the carrier's last rate case, after giving effect to the aforesaid tax exemptions, exclusive of any such school fare subsidy. Upon such certification, the Board of Commissioners of the District of Columbia shall pay to each such carrier an amount equal to the amount certified pursuant to clause (1) thereof; except that in no event shall such amount exceed the amount certified pursuant to clause (2) hereof."

The Commission disagrees with the position taken by protestants and intervenor. In its most simple form, the law merely says that if this Commission were to establish fares estimated to produce a fair and reasonable rate of five (5%) percent and the carrier earns only four (4%) percent, then the carrier under the law would be entitled to a subsidy payment to bring the earnings up to five (5%) percent. In no event,

however, can the subsidy exceed the number of school fare rides multiplied by the difference between the school fare and the lowest adult fare.

The school fare subsidy legislation is a type of after-the-fact remedy available to provide additional compensation to the carrier in the event the Commission overstated the net revenue projections, resulting in the carrier not making a fair return. It may also be classified as a contingency type of relief for an industry confronted with more than the normal contingencies. Thus, if, as suggested, the Commission were to assume in determining available revenues for the applicant that the applicant would receive the maximum school fare subsidy payment, then the basic purpose of the legislation would be vitiated. Moreover, had this been the real intent of the legislation it would have been a simple matter to draft a law merely providing for the payment of a subsidy equal to the number of school fare rides multiplied by the difference between the school fare and the lowest adult fare. However, this type of legislation was not enacted.

That the law was not intended to be construed as suggested by protestants and intervenors is clearly indicated by a careful analysis of the language contained therein. In the first place, its application is confined to "mass transportation operations in the District of Columbia." Thus, the determination as to eligibility for a subsidy under the aforementioned law would involve rigid allocations of revenues and expenses of applicant's entire operations in order to ferret out those revenues and expenses which relate only to "mass transportation operations in

the District of Columbia." Specifically, all revenues and expenses relating to charter, sightseeing, contract and other special operations of applicant, wherever performed, and all mass transportation operations in Maryland and Virginia, would have to be removed in arriving at applicant's net earnings from applicant's mass transportation operations in the District of Columbia. To accomplish such a feat in connection with past operations would present a laborious task; to undertake to accomplish such a feat prospectively would be an impossibility. Even accurate allocations covering past operations could not serve as an accurate basis for future allocations since the demand for future transportation service may be at considerable variance with past requirements.

Furthermore, even assuming that accurate allocations could be made prospectively, it is possible that net earnings from mass transportation operations in the District of Columbia would reflect a proper rate of return contemplated under the aforementioned law, and yet the net earnings from applicant's over-all operations would reflect a much lower return. In such a case applicant would not be entitled to a subsidy even though its net earnings from its over-all operations failed to produce an adequate return.

Future Results Under Present Fares

Having disposed of the major controversial issues in this case, the Commission will now enter its findings with respect to the financial results of applicant for the future rate year (calendar year, 1963) under the assumption that present fares remain in effect. The operating state-

ment below reflects the Commission's findings in this matter.

Basically, the figures on this statement are those developed by the Commission's staff in its Exhibit No. 20 and discussed by the Commission in this Order. The one change occurs in the depreciation figure, which has been increased by $4,018 from the staff's original figure, in order to give effect to the projected acquisition of eighty-two (82) rather than seventy-five (75) new buses on or about October 1, 1963.

Before setting out the projected results at present fares the Commission desires to comment upon the income tax figures which it utilizes in this and succeeding statements. The income tax has been calculated on the flow-through basis and is in substantial agreement with the methods used by all parties except intervenor's witness. The basic difference in the latter's calculations is his assumption that applicant will continue deducting $1,200,000 per year on its tax return for track removal accrual even after a finding by the Commission that such accrual should be discontinued. The Commission does not consider this assumption a reasonable one.

The following statement reflects a return of $937,669 or 3.18% on operating revenues, which the Commission does not consider a fair and adequate return and so finds.

Projected Operating Statement for Year 1963
AT PRESENT FARES

Operating Revenue		$29,521,301
Operating Revenue Deductions:		
Operating Expenses	$26,246,835	
Taxes, other than Income Taxes	796,005	
Income Taxes	208,309	
Depreciation (incl.82 new buses 10/1/63)	2,441,033	
Acquisition Adjustment	(1,028,860)	
Provision for Track Removal	-	
Limousine Contribution to Overhead	(79,690)	
Total Operating Revenue Deductions		28,583,632
NET OPERATING INCOME		$ 937,669
Operating Ratio		96.82%
Net Operating Income ÷ Operating Revenue		3.18%

Future Results Under Proposed Fares

The Commission will now enter its finding with respect to applicant's proposed fares, giving due consideration to its previous findings.

One of the factors to be considered in forecasting future revenues under an increased fare structure is fare resistance. It is a regrettable paradox that even when necessity requires an increase in transit fares to enable a transit operator to continue to provide adequate transportation services that a small percentage of riders resist the higher fares and find other modes of travel. Various formulae have been adopted by the regulatory authorities in giving weight to this fare resistance. The so-called Curtin formula which assumes a fare resistance equal to a decline in riding of .33% for each 1% increase in fares is frequently used. Except for the

testimony presented by GSA through Mr. Lipske, all parties used a resistance factor which assumed a decline of .20% for each 1% increase in fares. Mr. Lipske, testifying for GSA, used a slightly lower resistance factor -- .13% for each 1% increase in fares.

The Commission has carefully weighed all the evidence relating to the resistance factor and finds that the proper fare resistance factor to be used in this proceeding should assume a decline in riding equal to .13% for each 1% increase in fares.

Again, the figures used in the following operating statement are those developed by the Commission's staff in its Exhibits Nos. 20 and 22. These figures give effect to the reduction in accrual for Injuries and Damages from a rate of 4.25% to 4.00% of gross operating revenues.

The results of operations as shown by this statement is a net operating income of $2,924,116 or a return of 8.86% of gross operating revenues. The Commission finds that such a rate of return will enable applicant to realize more net revenues than are justified by the financial requirements of applicant.

Projected Operating Statement for Year 1963
AT FARES PROPOSED BY APPLICANT

Operating Revenue		$33,015,187
Operating Revenue Deductions:		
Operating Expenses	$26,312,787	
Taxes, other than Income Taxes	796,005	
Income Taxes	1,649,796	
Depreciation (including 82 new buses October 1, 1963)	2,441,033	
Acquisition Adjustment	(1,028,860)	
Limousine Contribution to overhead	(79,690)	
Total Operating Revenue Deductions		$30,091,071
NET OPERATING INCOME		$ 2,924,116
Operating Ratio		91.14%
Net Operating Income ÷ Operating Revenue		8.86%

Future Results Under Fares
Prescribed by the Commission

The Commission will now enter its findings with respect to a fare structure for applicant which will result in a fair and proper return and rate of return on gross operating revenues, giving full consideration to its previous findings.

While the projected revenues under the fares authorized herein are based on a full twelve-month period, calendar year 1963, such fares will, of course, be in effect only eight and one-half (8½) months. On a full twelve-month basis, under the fares authorized herein, applicant can be expected to receive total gross operating revenues in the amount of $30,420,638. Considering the fact that the fares authorized herein will be in effect for a period of only eight and one-half (8½) months during the calendar year 1963, applicant can be expected to receive $30,164,711. Thus,

insofar as the calendar year, 1963, is concerned, applicant will actually receive $255,927 less than that shown in the operating statement below. Nevertheless, in view of the testimony in this record, all of which is related to a full twelve-month period, the Commission is of the opinion that in making its findings it must base its projections on a full twelve-month period. This situation causes the Commission to feel that in future rate proceedings the future test period should be so established as to allow a full year's operations under the fares authorized by the Commission.

The following operating statement projects the results of operations if the charge for tokens is fixed at four (4) for eighty-five (85¢) cents and the cash fare of twenty-five (25¢) cents remains unchanged. Once again, the figures utilized here are those developed by the Commission's staff in its Exhibits Nos. 20 and 22 and give effect to a .13% resistance factor and a 4.00% Injuries and Damages rate. They also give effect to depreciation on eighty-two (82) new buses, representing one-fourteenth (1/14) of the present fleet, required by this Order to be purchased and placed in service this year.

This statement shows a net operating income of $1,480,746 or a return of 4.87% on gross operating revenues, both of which are, in the opinion of the Commission, within the range of reasonableness for this applicant.

Projected Operating Statement for Year 1963
CASH FARES-25¢; TOKEN FARES 4-for 85¢

Operating Revenue		$30,420,638
Operating Revenue Deductions:		
Operating Expenses	$26,209,006	
Taxes, other than Income Taxes	796,005	
Income Taxes	602,398	
Depreciation (including 82 new buses October 1, 1963)	2,441,033	
Acquisition Adjustment	(1,028,860)	
Limousine Contribution to overhead	(79,690)	
Total Operating Revenue Deductions		28,939,892
NET OPERATING INCOME		$ 1,480,746
Operating Ratio		95.13%
Net Operating Income ÷ Operating Revenue		4.87%

Rate of Return

Section 6(a) (3) and (4), Article XII, Title II of the Compact, which sets forth the factors to be considered by the Commission in prescribing just and reasonable fares, reads as follows:

> "(3). In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.

"(4). It is hereby declared as a matter of legislative policy that in order to assure the Washington Metropolitan District of an adequate transportation system operating as private enterprises the carriers therein, in accordance with standards and rules prescribed by the Commission, should be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors. As an incident thereto, the opportunity to earn a return of at least 6½ per centum net after all taxes properly chargeable to transportation operations, including but not limited to income taxes, on gross operating revenues, shall not be considered unreasonable.

Thus, in clear and unequivocal language of the Compact, the Commission is duty bound to "prescribe just and reasonable fares" based on the operating ratio theory of rate making. No mention is made of return on rate base, return on equity, or any other basis.

The motivating factor which prompted the regulatory authorities to abandon the other bases in favor of the operating ratio theory in fixing reasonable rates of return for urban transit companies was that these other theories did not provide a reasonable means for compensating these companies for the risks inherent in transit operations.

A substantial portion of the evidence in this case relates to the relatively small amount of equity capital which the investors have in the property devoted to public use by applicant. It is a matter of record that a substantial portion of the property of applicant has been acquired through funds made available by borrowings and from reserves. The protestants and intervenor contend that in determining reasonable earnings consideration should be given to the return on equity capital. The Supreme Court of the United States has passed upon the issue in-

volving the source of money used to acquire property. In the case of Board of Public Utility Commissioners, et al., vs. New York Telephone Company, 271 U.S. 23 (1926), supra, the Supreme Court stated:

> "Constitutional protection against confiscation does not depend on the source of the money used to purchase the property. It is enough that it is used to render the service...."

Whether the investor borrows money or invests new capital through the issuance of stock, the cost to the ratepayer for the operation and use of the utility's assets is the same. Interest expense on borrowed money is not allowed by the Commission as a deduction against income for rate purposes. Thus, it is sufficient, as previously noted in the case cited above, that applicant acquire property for the rendition of safe and adequate service without regard to the source of the money to acquire such property. This is not to say that the Commission is not concerned about the need for applicant to increase its equity in the business in order to insure the financial stability of applicant. It appears, however, that in establishing a fair rate of return the Commission is not permitted to give significant consideration to return on equity.

It has also been contended that the Commission should give consideration, in establishing reasonable earnings, to return on applicant's rate base. As previously noted in this Order, the other theories of rate making, including return on rate base, were abandoned in favor of the operating ratio theory. Thus, in view of the specific language of the Compact the Commission is of the opinion that it need give little

consideration to return on applicant's rate base.

Even though relatively unimportant, the Commission feels it must correct misunderstandings evident from testimony of certain witnesses and from the tenor of intervenor's and protestants' cross-examination as to the extent of the stockholders' investment in D. C. Transit System, Inc. At August 31, 1962, the capital stock, plus plowed-back earnings, totaled over $3,500,000 according to applicant's balance sheet, and over $4,200,000 according to the balance sheet submitted by the staff.

In the final analysis, the matter of fixing just and reasonable rates involves a balancing of the investor and the consumer interests. From the investor point of view, it is important that there be enough revenue not only to cover operating expenses, but also for the capital costs of the business. These include service on the debt, dividends on the stock and a reasonable portion of the earnings to be retained in the business for use of applicant. The consumer's interest is protected in that the Commission has given consideration to the need in the public interest of adequate and sufficient transportation service by applicant at the lowest cost consistent with the furnishing of such service.

Notwithstanding all the testimony in this case, the Commission is of the opinion that in determining reasonable earnings under the aforementioned guide lines that primary consideration must be given to the operating ratio theory and that only minor consideration need be given the other factors brought into issue.

The Commission, after considering the operating and financial needs of applicant, and all other relevant factors, concludes that an operating ratio of 95.08%, as established in the last previous rate case, still constitutes a fair return to applicant and that a net operating income of about $1,480,000 is sufficient and proper to maintain the applicant in sound financial health and will provide adequate compensation for the investors. An exact figure for net earnings cannot be established in advance due to the inherent uncertainties in the transit business, but the Commission estimates that the fares authorized herein will produce an operating ratio between 95.0% and 95.2%, which it considers to be within the range of a fair return for applicant.

The Commission finds that the fares authorized herein will produce reasonable net revenues to allow applicant to service its debt, pay reasonable dividends, retain a reasonable portion in its business and to attract investments of private investors.

Comments on Opinion of Court of Appeals

In issuing this Order, the Commission is fully aware of the recent ruling of the United States Court of Appeals for the District of Columbia Circuit in the case of Leonard N. Bebchick, et al., vs. Public Utilities Commission, et al., No. 16454, involving the 1960 rate proceeding of

applicant. This ruling has been stayed pending disposition by the United States Supreme Court of applicant's petition for writ of certiorari.

As noted by the Court in its opinion, this Commission has primary jurisdiction over transit rate regulation in this jurisdiction. In the exercise of its jurisdiction, the Commission has given the most careful consideration and studied exhaustively the voluminous record pertaining to the issues upon which the Court of Appeals has spoken.

The fare adjustment, if made as contemplated by the Court of Appeals in the aforementioned case, will amount to $1,318,611.95, representing five (5¢) cents each for 26,372,239 cash fares paid during the period March 6, 1960, through January 18, 1961, both dates inclusive.

The Court, in its opinion of January 31, 1963, pointed to two "errors" and a third "defect" which affected the net operating income figures, as follows:

1. "Accrual as operating expenses of the estimated cost of track removal and repaving."

The Court questioned whether or not the program's cost estimates recognized economies due to participation of the District of Columbia Highway Department; the Court also pointed to the accumulation, in March 1960, of over $3,000,000 in the reserve for track removal and repaving.

2. "The allowance of depreciation for buses."

The Court pointed to the over-accrual of depreciation on buses, by 1959, of approximately $1,200,000 and indicated that averages used in the group method of depreciation were not working out.

3. "Depreciation accruals on abandoned rail properties."

The Court cited the case of Washington Gas Light Company vs. Baker, 90 U.S. App. D.C. 98, 195 F 2d 29 (1950), and said that justification for depreciation on abandoned property depends upon whether the investors have, during the useful life of the property, been compensated for assuming the risk that it would become obsolete before the investment in it was entirely recovered.

As for the first item mentioned by the Court, testimony in this case has established the fact that the economies made possible by the District of Columbia Highway Department's sharing of paving costs were all given full effect in the cost estimates for track removal and repaving. Regarding the $3,000,000 balance in the reserve for track removal, if any adjustment is ever made to the 1959 accruals to this reserve, the effect will carry forward to the present balance in the reserve. The reserve for track removal and repaving is a continuous-type account, so that if, say, $1,000,000 were disallowed as an accrual in 1959, then the balance in this reserve at December 31, 1962, would be $3,814,000 instead of $4,814,000, and would be insufficient to meet the estimated cost of track removal and repaving estimated by the District of Columbia Highway Department through June 30, 1965. If the Court's decision is implemented, it appears that the refundable revenues allocable to the reserve for track removal and repaving will have to be reserved for track removal work since the Commission has found that the present reserves are reasonable in view of the estimated cost of the current track removal and repaving program of

the District of Columbia Highway Department.

The critical fact is that although the Court may have been justified, on the record before it, in ruling that the allowance for track removal and repaving in 1960 was unreasonable, the current track removal and repaving program will eliminate any excess accruals as of June 30, 1965. As noted in this Order, further accruals are being suspended as of January 1, 1963.

As for the second item mentioned by the Court, testimony in the present case has developed the fact that the $1,200,000 bus depreciation over-accrual actually grew, by 1961, to $2,414,638. The testimony further developed that by May, 1961, the District of Columbia Public Utilities Commission, with the completed Reserve Requirement Study in hand, determined that this over-accrual on buses had been substantially offset by under-accruals on other classes of company property and by the unrecovered cost on rail facilities as projected to August 15, 1963. If the Court's decision is implemented, it further appears that the refundable revenues allocable to excess depreciation on buses will have to be allocated to re-building a deficient depreciation reserve.

Here again the record in the 1960 rate case did not include the final results of the Reserve Requirement Study by Mr. Ingoldsby because it had not been completed. The completed study, as subsequently noted by the District of Columbia Public Utilities Commission, indicated that any excess depreciation accruals on buses had been substantially offset by under-accruals on other classes of property and rail facilities.

As for the third item mentioned by the Court, this Commission, in another part of this Order, has explored the problem and concluded that the investors have not yet been compensated for the obsolescence or loss on abandonment of rail facilities.

The Commission is also aware of the Supplemental Opinion of February 21, 1963, of the Court of Appeals in the above styled case, wherein the following statement appears:

> "Our judgment is without prejudice to the right of the Washington Metropolitan Transit Commission to exercise consistently with our opinion and judgment in this cause any powers it may have."

The Commission's powers are delineated in the Compact. In view of the present status of the aforementioned case in the courts, the Commission had no other alternative than to proceed on the record before it. Our judgment could not be based on a stayed court decision which is still in the appeal process.

The Commission is also aware of the proceeding pending in the United States District Court for the District of Columbia involving a 1961 rate proceeding of applicant. On March 14, 1963, the Court of Appeals for the District of Columbia Circuit denied a petition for ancillary relief in connection with the proceeding pending before the District Court. Thus the rates of applicant, approved in Order No. 4735 of the Public Utilities Commission and subject of appeal before the District Court, remain in effect. Moreover, the rates remain lawful by operation of law pursuant to Section 5(b), Article XII, Title II, of the Compact, and such rates are currently being charged pursuant to tariffs on file with this Commission.

FINDINGS OF FACT

While the Commission has not in this Order attempted to discuss the numerous and sundry contentions made by the various parties it, nevertheless, has carefully reviewed and considered, and in each instance gave proper weight to, all the oral testimony, exhibits and legal arguments relating thereto in arriving at its findings and in reaching its conclusions.

In discussing the essential and relevant issues, the Commission entered its findings along with the discussions and it is not deemed necessary to repeat them here. All statements of fact in this Order, for which a finding was not entered, are hereby adopted by the Commission as additional findings of fact.

In arriving at its findings, the Commission has also given due consideration to all provisions of the Compact, including but not limited to the inherent advantages of transportation by applicant; to the effect of rates upon the movement of traffic by applicant; to the need, in the public interest, of adequate and efficient transportation service by applicant at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable applicant, under honest, economical, and efficient management, to provide such service.

CONCLUSIONS OF LAW

The Commission concludes as a matter of law:

1. That the present fares of applicant are unjust and unreasonable and will not produce sufficient net revenues to attract investments of

private investors.

2. That the fares proposed by applicant are unjust and unreasonable and would produce net revenues in excess of the financial requirements of applicant.

3. That the fares authorized by this Order are just and reasonable; are not unduly preferential or unduly discriminatory either between riders or section of the Metropolitan District; and will produce sufficient net earnings to make investments in applicant attractive to private investors; and will allow applicant to service its debt, pay reasonable dividends and retain a reasonable portion thereof in its business.

All other conclusions of law reached in other parts of this Order are hereby adopted by the Commission as additional conclusions of law.

ORDER

THEREFORE, it is ordered that:

1. Effective January 1, 1963, no further accruals to the reserve for track removal and repaving shall be charged against income of applicant, and no such accruals shall be reflected in the accounts and records of applicant, unless otherwise ordered by the Commission.

2. The amortization of the Acquisition Adjustment Account will continue unchanged, unless, and until, otherwise ordered by the Commission.

3. Effective January 1, 1963, all buses acquired by applicant subsequent to 1956, shall be amortized in the form of depreciation charges in equal monthly amounts over a period of time so as to allow applicant to recover the net book value as of December 31, 1962, in fourteen (14) years from the date such buses were first placed in service. The estimated

salvage value of these buses shall be four (4%) percent of the original cost new.

4. The cost of all buses acquired by applicant in the future shall be amortized in the form of depreciation charges in equal monthly amounts over a period of fourteen (14) years from the date such buses were first placed in service, and the estimated salvage value shall be four (4%) percent of the original cost new.

5. Applicant shall place an order for eighty-two (82) new air-conditioned buses which shall be placed in service on or before October 1, 1963.

6. Beginning in 1964, applicant shall purchase on the average each year, a number of new air-conditioned buses equal to one-fourteenth (1/14) of the number of buses in its fleet.

7. The rate of four (4%) percent of gross revenues shall be accrued for Injuries and Damages effective April 14, 1963.

8. The proposed tariffs, and the use of the fares and charges stated therein are hereby denied.

9. Effective 4:00 a. m., April 14, 1963, applicant, D. C. Transit System, Inc., is hereby authorized to increase its token fares from five (5) tokens for One ($1.00) Dollar to four (4) tokens for eighty-five (85¢) cents, and that all other fares of applicant shall remain in effect pursuant to tariffs on file with the Commission.

10. The motion to dismiss the application, made during the course of the proceedings, is hereby denied.

11. The record in this proceeding shall be left open for the purpose of receiving additional evidence, at some future date, on the single issue

involving the Acquisition Adjustment Account pursuant to the provisions of this Order.

12. Any ambiguity in this Order shall be resolved so as to effectuate the carrying out of the over-all intent of this Order.

BY DIRECTION OF THE COMMISSION:

DELMER ISON
Executive Director

HOOKER, Commissioner, dissents.

The applicable law which governs fares to be prescribed for transportation companies under the jurisdiction of the Washington Metropolitan Area Transit Commission is found in Subsection 3 and 4, page 16 of Section 6, of the Tri-State Compact as follows:

> "(3) In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service.
>
> "(4) It is hereby declared as a matter of legislative policy that in order to assure the Washington Metropolitan District of an adequate transportation system operating as private enterprises the carriers therein, in accordance with standards and rules prescribed by the Commission, should be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors. As an incident thereto, the opportunity to to earn a return of at least 6½ per centum net after all

taxes properly chargeable to transportation operations, including but not limited to income taxes, on gross operating revenues, shall not be considered unreasonable."

It is ascertained from the law quoted that Congress set forth the guide lines that it intended the Commission to follow when rates are established. The factors of these guide lines are that due consideration shall be given to the advantages of transportation, the effect of rates upon the movement of traffic, to the need in the public interest of adequate and efficient transportation at the lowest cost consistent with the furnishing of such services, and the need of revenues sufficient to enable such transit carrier to provide this type of service under honest, efficient and economical management. The Congress declared it to be its legislative policy that in order to assure that such adequate transportation is given the public, the carrier should be afforded the opportunity of earning such return as to make the carriers' investments attractive to private investors, and as an incident thereto, the opportunity to earn a return of at least 6½ per centum net after all taxes properly charged to transportation operations, including but not limited to income taxes, on gross operating revenues, shall not be considered unreasonable.

It is to be noted that as an incident for the investments of these carriers to be attractive to private investors, the opportunity of the carriers to earn a return of at least 6½ per centum net on gross operating revenues should not be considered to be unreasonable.

The word "incident" is defined in BLACK'S LAW DICTIONARY, DELUXE EDITION, as follows:

> "This word, used as a noun, denotes anything which inseparably belongs to, or is connected with, or inherent in, another thing, called the 'principal.' In this sense, a court-baron is incident to a manor. Also, less strictly, it denotes anything which is usually connected with another, or connected for some purposes, though not inseparably."

The word "at" is defined by Webster as "the point or place where a thing is, or occurs; as at the center; at home; at hand; at the door. . ." "Least" is defined by Webster as "smallest, either in size or degree; shortest; little beyond all other. . ." When the meaning and reasoning of the words "incident," "at" and "least" are considered together, it is crystal clear that the minimum rate of return to be allowed is 6½ per centum net on the gross operating revenue. "At" means at a direct point or place as "at a door" and "least" means the "smallest, . . .little beyond all other," the smallest amount possible. The smallest return the carrier should earn for its investments to be attractive to private investors is 6½ per centum net on its gross operating revenue. Since Congress has stated that this is not considered as being unreasonable, then it follows, it would seem, that Congress has pegged definitely 6½ per centum on gross operating revenues as being the sum required for a carrier to make for its investments to be attractive to private investors.

A deliberate determination of a rate that shows conclusively that the carrier is not afforded the opportunity to earn at least 6½ per centum return on its gross operating reveues is undoubtedly in conflict with the law as set forth in the Compact.

It is manifestly plain that Congress established these guide lines

for the deliberate purpose of making certain that a fair return would be received by the transportation companies under the supervision of this Commission. After Congress outlined all of the factors that should be considered, it specifically stated that in order to assure (to make certain) that adequate service is given the public, the transportation companies should be afforded the opportunity to make a return that will be attractive to investors and, as an incident thereto, to earn a return of at least 6½ per centum net. The intent of Congress could not have been more plainly stated. The law says at least 6½ per centum net shall not be considered unreasonable on the gross operating revenues of the company. It is plain, specific and definite that at least 6½ per centum is not to be considered unreasonable. The reasonableness of a return of 6½ per centum is not subject to valid objection. It is settled by the Compact.

The policy stated by Congress is a sound policy and should have been adhered to in this Case. Congress may have had some apprehension that an insufficient return might be established by the Commission and, being men of experience as well as wisdom, know that it is essential for transportation companies to make a reasonable return on their investments if the public is to receive good service. When transportation companies are required to serve the public at misery rates of return on their investments in property dedicated to public use, the public, as well as the company, suffers. The public is entitled to receive good service. It is essential for the best interest of the public.

A transportation company should not be expected to maintain a high grade of service unless it is receiving a fair return on its investment. The customers should pay for good service and should receive it. Poor service at any price is high. The public is willing to pay reasonable rates if the service is good. Penny-pinching, miserly rates of return are adverse to the best public interest. Investors cannot be expected to invest in securities of a transportation company when its rates of return are so low as to raise doubts in the minds of the investors as to the wisdom of such investments. If such a company is able to secure money, it will not be able to do so on as favorable terms as will the company that is and has been receiving a fair return on its property continuously for a number of years. The rate of return prescribed by the majority of the Commission in this Case is clearly contrary to the legislative policy established by Congress.

A determined rate of 5 or 5½ per centum obviously does not afford the company the opportunity to earn at least 6½ per centum on its gross operating revenues.